

110TH CONGRESS
2D SESSION

H. R. 6499

To amend the Internal Revenue Code of 1986 to reform the estate and gift tax.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2008

Mr. McDERMOTT introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to reform the estate and gift tax.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sensible Estate Tax
5 Act of 2008”.

6 **SEC. 2. RESTORATION OF ESTATE TAX; REPEAL OF CARRY-**
7 **OVER BASIS.**

8 (a) IN GENERAL.—The following provisions of the
9 Economic Growth and Tax Relief Reconciliation Act of

1 2001, and the amendments made by such provisions, are
 2 hereby repealed:

3 (1) Subtitles A and E of title V.

4 (2) Subsection (d), and so much of subsection
 5 (f)(3) as relates to subsection (d), of section 511.

6 (3) Paragraph (2) of subsection (b), and para-
 7 graph (2) of subsection (e), of section 521.

8 The Internal Revenue Code of 1986 shall be applied as
 9 if such provisions and amendments had never been en-
 10 acted.

11 (b) SUNSET NOT TO APPLY.—

12 (1) Subsection (a) of section 901 of the Eco-
 13 nomic Growth and Tax Relief Reconciliation Act of
 14 2001 is amended by striking “this Act” and all that
 15 follows and inserting “this Act (other than title V)
 16 shall not apply to taxable, plan, or limitation years
 17 beginning after December 31, 2010.”.

18 (2) Subsection (b) of such section 901 is
 19 amended by striking “, estates, gifts, and transfers”.

20 **SEC. 3. UNIFIED CREDIT AGAINST THE ESTATE TAX.**

21 (a) IN GENERAL.—Subsection (c) of section 2010 of
 22 the Internal Revenue Code of 1986 (relating to applicable
 23 credit amount) is amended by striking all that follows “the
 24 applicable exclusion amount” and inserting “. For pur-

1 poses of the preceding sentence, the applicable exclusion
2 amount is \$2,000,000.”.

3 (b) INFLATION ADJUSTMENT.—Subsection (c) of sec-
4 tion 2010 of such Code, as amended by subsection (a),
5 is amended—

6 (1) by striking “For purposes of this section,”
7 and inserting the following:

8 “(1) IN GENERAL.—For purposes of this sec-
9 tion,” and

10 (2) by adding at the end the following new
11 paragraph:

12 “(2) INFLATION ADJUSTMENT.—In the case of
13 any decedent dying in a calendar year after 2008,
14 the \$2,000,000 amount in paragraph (1) shall be in-
15 creased by an amount equal to—

16 “(A) such dollar amount, multiplied by

17 “(B) the cost-of-living adjustment deter-
18 mined under section 1(f)(3) for such calendar
19 year, determined by substituting ‘2007’ for
20 ‘1992’ in subparagraph (B) thereof.

21 If any increase determined under the preceding sen-
22 tence is not a multiple of \$10,000, such increase
23 shall be rounded to the nearest multiple of
24 \$10,000.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying, and gifts made, after December 31, 2008.

SEC. 4. RATES OF TAX.

(a) IN GENERAL.—The table in paragraph (1) of section 2001(c) of the Internal Revenue Code of 1986 (relating to rate schedule) is amended by striking the last 3 rows and inserting the following:

Over \$1,500,000 but not over \$5,000,000.	\$555,800, plus 45 percent of the excess of such amount over \$1,500,000.
Over \$5,000,000 but not over \$10,000,000.	\$2,130,800, plus 50 percent of the excess of such amount over \$5,000,000.
Over \$10,000,000	\$4,630,800, plus 55 percent of the excess of such amount over \$10,000,000.

(b) ADJUSTMENT FOR INFLATION.—Paragraph (2) of section 2001(c) of such Code is amended to read as follows:

“(2) INFLATION ADJUSTMENT.—In the case of any decedent dying in a calendar year after 2008—

“(A) each minimum and maximum dollar amount for each rate bracket in the table in paragraph (1) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting

1 ‘2007’ for ‘1992’ in subparagraph (B)
2 thereof, and

3 “(B) each of the amounts setting forth the
4 tax under such table shall be adjusted to the
5 extent necessary to reflect the adjustments in
6 the rate brackets made by subparagraph (A).
7 If any increase determined under subparagraph
8 (A) is not a multiple of \$10,000, such increase
9 shall be rounded to the nearest multiple of
10 \$10,000.”.

11 (c) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall apply to estates of decedents dying,
13 and gifts made, after December 31, 2008.

14 **SEC. 5. RESTORATION OF CREDIT FOR STATE DEATH TAX.**

15 (a) IN GENERAL.—Section 2011 of the Internal Rev-
16 enue Code of 1986 (relating to credit for State death
17 taxes) is amended by striking subsection (f).

18 (b) REPEAL OF DEDUCTION FOR STATE DEATH
19 TAXES.—

20 (1) IN GENERAL.—Section 2058 of such Code
21 (relating to State death taxes) is amended by adding
22 at the end the following:

23 “(c) TERMINATION.—This section shall not apply to
24 the estates of decedents dying after December 31, 2008.”.

1 (2) CONFORMING AMENDMENT.—Section
2 2106(a)(4) of such Code is amended by adding at
3 the end the following new sentence: “This paragraph
4 shall not apply to the estates of decedents dying
5 after December 31, 2008.”.

6 (c) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall apply to estates of decedents dying,
8 and gifts made, after December 31, 2008.

9 **SEC. 6. RESTORATION OF UNIFIED CREDIT AGAINST GIFT**
10 **TAX.**

11 (a) IN GENERAL.—Paragraph (1) of section 2505(a)
12 of the Internal Revenue Code of 1986 (relating to general
13 rule for unified credit against gift tax) is amended by
14 striking “(determined as if the applicable exclusion
15 amount were \$1,000,000)”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to estates of decedents dying, gen-
18 eration-skipping transfers, and gifts made, after Decem-
19 ber 31, 2008.

20 **SEC. 7. UNIFIED CREDIT INCREASED BY UNUSED UNIFIED**
21 **CREDIT OF DECEASED SPOUSE.**

22 (a) IN GENERAL.—Section 2010 of the Internal Rev-
23 enue Code of 1986, as amended by section 2, is amend-
24 ed—

1 (1) by striking the last sentence of paragraph
2 (1),
3 (2) by striking paragraph (2), and
4 (3) by inserting after paragraph (1) the fol-
5 lowing new paragraph:

6 “(2) APPLICABLE EXCLUSION AMOUNT.—For
7 purposes of paragraph (1)—

8 “(A) IN GENERAL.—The applicable exclu-
9 sion amount is the sum of—

10 “(i) the basic exclusion amount, and

11 “(ii) in the case of a surviving spouse,
12 the aggregate deceased spousal unused ex-
13 clusion amount.

14 “(B) BASIC EXCLUSION AMOUNT.—

15 “(i) IN GENERAL.—For purposes of
16 subparagraph (A), the basic exclusion
17 amount is \$2,000,000.

18 “(ii) INFLATION ADJUSTMENT.—In
19 the case of any decedent dying in a cal-
20 endar year after 2008, the \$2,000,000
21 amount in clause (i) shall be increased by
22 an amount equal to—

23 “(I) such dollar amount, multi-
24 plied by

1 “(II) the cost-of-living adjust-
2 ment determined under section 1(f)(3)
3 for such calendar year by substituting
4 ‘calendar year 2007’ for ‘calendar
5 year 1992’ in subparagraph (B) there-
6 of.

7 If any amount as adjusted under the pre-
8 ceding sentence is not a multiple of
9 \$100,000, such amount shall be rounded
10 to the nearest multiple of \$100,000.

11 “(C) AGGREGATE DECEASED SPOUSAL UN-
12 USED EXCLUSION AMOUNT.—For purposes of
13 this subsection—

14 “(i) AGGREGATE DECEASED SPOUSAL
15 UNUSED EXCLUSION AMOUNT.—The term
16 ‘aggregate deceased spousal unused exclu-
17 sion amount’ means the lesser of—

18 “(I) the basic exclusion amount,
19 or

20 “(II) the sum of the deceased
21 spousal unused exclusion amounts of
22 the surviving spouse.

23 “(ii) DECEASED SPOUSAL UNUSED
24 EXCLUSION AMOUNT.—For purposes of
25 subsection (A), the term ‘deceased spousal

1 unused exclusion amount' means, with re-
2 spect to the surviving spouse of any de-
3 ceased spouse dying after December 31,
4 2008, the excess (if any) of—

5 “(I) the applicable exclusion
6 amount of the deceased spouse, over

7 “(II) the amount with respect to
8 which the tentative tax is determined
9 under section 2001(b)(1) on the es-
10 tate of such deceased spouse.

11 “(iii) SPECIAL RULES.—

12 “(I) ELECTION REQUIRED.—A
13 deceased spousal unused exclusion
14 amount may not be taken into ac-
15 count by a surviving spouse under this
16 paragraph unless the executor of the
17 estate of the deceased spouse files an
18 estate tax return on which such
19 amount is computed and makes an
20 election on such return that such
21 amount may be so taken into account.
22 Such election, once made, shall be ir-
23 revocable. No election may be made
24 under this clause if such return is
25 filed after the time prescribed by law

1 (including extensions) for filing such
2 return.

3 “(II) EXAMINATION OF PRIOR
4 RETURNS AFTER EXPIRATION OF PE-
5 RIOD OF LIMITATIONS WITH RESPECT
6 TO DECEASED SPOUSAL UNUSED EX-
7 CLUSION AMOUNT.—Notwithstanding
8 any period of limitation in section
9 6501, after the time has expired
10 under section 6501 within which a tax
11 may be assessed under chapter 11 or
12 12 with respect to a deceased spousal
13 unused exclusion amount, the Sec-
14 retary may examine a return of the
15 deceased spouse to make determina-
16 tions with respect to such amount for
17 purposes of carrying out this sub-
18 section.

19 “(D) REGULATIONS.—The Secretary shall
20 prescribe such regulations as may be necessary
21 or appropriate to carry out this subsection.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Paragraph (1) of section 2505(a) of such
24 Code, as amended by section 5, is amended to read
25 as follows:

1 “(1) the applicable credit amount under section
2 2010(c) which would apply if the donor died as of
3 the end of the calendar year, reduced by”.

4 (2) Section 2631(c) of such Code is amended by
5 striking “the applicable exclusion amount” and in-
6 serting “the basic exclusion amount”.

7 (3) Section 6018(a)(1) of such Code is amended
8 by striking “applicable exclusion amount” and in-
9 serting “basic exclusion amount”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to estates of decedents dying, gen-
12 eration-skipping transfers, and gifts made, after Decem-
13 ber 31, 2008.

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